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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of Section 273(d)(5) of the Communications Act of 1934 as Amended by the Telecommunications Act of 1996-- Dispute Resolution Regarding Equipment Standards	)	GC Docket No. 96-42

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COMMENTS OF NORTHERN TELECOM

Northern Telecom Inc. ("Nortel") hereby replies to the comments on the proposal to adopt dispute resolution procedures relating to equipment standards adopted by non-accredited standards development organizations.[1/] As detailed herein, Nortel believes that the approach suggested by Bellcore (with some further refinements) best meets Congress' desire to enable all interested parties to influence the final resolution of the dispute (when the parties are unable to agree on a dispute resolution methodology) without significantly impairing the efficiency, timeliness, and technical quality of the activity.

Nortel is the leading global supplier, in 90 countries, of digital telecommunication switching systems, supplying systems

1/ Implementation of Section 273(d)(5) of the Communications Act of 1934 as Amended by the Telecommunications Act of 1996 -- Dispute Resolution Regarding Equipment Standards, GC Docket No. 96-42, FCC 96-87, 61 Fed. Reg. 9966 (March 12, 1996)(hereafter cited as "Notice").

to businesses, universities, local, state and federal governments, the telecommunications industry, and other institutions worldwide. The company employs more than 22,000 people in the United States in manufacturing plants, research and development centers, and in marketing, sales and service offices across the country.

Nortel actively participates in both accredited and non-accredited standards development organizations ("NASDO") developing "industry-wide" standards and requirements for telecommunications equipment and services. Nortel is thus interested in this rulemaking proceeding.

New Section 273(d)(5) of the Communications Act requires the Commission to enact a dispute resolution process to be used in the event all parties participating in the standards development activity cannot agree themselves to a dispute resolution process. Nortel believes that this alternate or "fallback" dispute resolution process must be carefully defined. The statutory definition of a NASDO that sets industry-wide standards and requirements is not simply limited to Bellcore, but could apply to many other industry Forums and consortia. These industry organizations (which may be deemed NASDOs), as well as Bellcore, make significant contributions that enable advances in the telecommunications industry's adoption and deployment of new technologies and services. Nortel thus believes that it is crucial not to introduce a mechanism for delay and disruption in these bodies by adopting an alternate dispute resolution process that may encourage forum shopping by a company seeking to

maximize its influence, or which invites abuse or allows a company to target a NASDO for disruption.

Nortel has reviewed the Commission's tentative proposal as well as the initial comments of Bellcore, Corning, Bell Atlantic, BellSouth, TIA, and US West. Based on its experiences and involvement with standards development organizations, Nortel has the following comments.

Nortel supports the Bellcore position that strongly urges "the Commission to retain the alternate dispute resolution procedures as the extraordinary, rarely used ones that we believe congress intended, and to encourage the parties to adopt their own procedures whenever possible." It is important not to create a mechanism that becomes a *de facto* appeals process that encourages companies with relatively minor technical disagreements to raise a dispute so as to forum shop for a more favorable decision.

Nortel believes that to meet the goal of enabling "all interested parties to influence the final resolution of the dispute without significantly impairing the efficiency, timeliness, and technical quality of the activity" within the 30 day statutory limit, the decision process must remain with the originating NASDO. The alternate dispute resolution process must impose procedures to ensure that the funding parties can resolve a dispute in an "open, nondiscriminatory, and unbiased fashion." Nortel believes that this can only be achieved by ensuring due process in the originating NASDO (e.g., by using mediation or other procedures), and that a change of venue is not consistent

with the goal of a quality technical decision within the 30 day statutory limit.

Nortel agrees with Corning, TIA and others that binding arbitration is not appropriate as the alternate dispute resolution process. Nortel believes that those parties have clearly and forcefully articulated the reasons for rejecting binding articulation, and that those reasons are valid.

Nortel believes, however, that the Corning proposed alternate dispute resolution process is fatally flawed and unworkable, and does not adequately comport with Congress' intent in adopting Section 273(d)(5). Nortel is concerned with several shortcomings in the Corning proposal. First, allowing the disagreeing party or disputant to choose the relevant accredited standards development organization ("SDO") to determine whether a consensus does or does not exist with respect to the NASDO's proposed standard or generic requirement encourages forum shopping. The disputing party may make such a decision so as to maximize its influence or cause delay. Even if the disputant does not directly select the accredited SDO, allowing a company to initiate a change of venue still invites shopping for a more favorable forum. This approach thus invites abuse.[2/]

2/ The legislation does allow the Commission to adopt penalties to discourage frivolous disputes. However, the Corning definition that a dispute is not frivolous "so long as there is some legitimate basis for challenging the NASDO's determination with respect to a particular standard or generic requirement, and so long as the participating party's invocation of the alternate dispute resolution process is not imposed solely for the purposes of delay", would make it difficult or impossible to argue that any dispute is "frivolous," since any complex technical standard includes various compromises which one could argue are a legitimate basis for disagreement.

Second, there is no assurance that an accredited SDO with the required expertise exists. Moreover, even if an accredited SDO with relevant expertise exists, it is unrealistic to believe that such a group, starting from scratch, could reach a quality consensus position within the 30 day limit established by the legislation. Accredited SDOs are very effective in building a broad consensus on technical standards within their due process procedures over a period of time. However, it is unrealistic to expect that process to reach consensus on what is likely a controversial issue, starting from scratch, in less than 30 days. The most likely outcome is that the issue gets placed on the industry-reviewed unresolved issues list. In addition, once on the list, the SDO, already identified as responsible for determining if a consensus exists, could decide to work the technical issue further and in effect "hijack" the work from the NASDO. Nortel is therefore concerned that with a change of venue, it is unlikely that a quality decision can be achieved within the 30 day limit.

Third, the Corning proposal would have the Engineering Committee ("EC") determine if there is a consensus for the NASDO's standard or technical requirement. However, under Corning's proposal, this determination would be based on consensus in the EC, but excluding any members who may be "Affiliated" with either the NASDO or disputing party. Such an exclusion may in fact remove from the consensus a significant number, if not all, of the parties with the required technical expertise as well as a direct and material interest in getting

the issue resolved quickly. Nortel believes that a consensus of uninformed and uninvolved members of the EC would not be very meaningful.

Fourth, referring a dispute to another body for resolution and excluding the disputing parties from the decision process is, in essence, a form of arbitration. All of the commenting parties have rejected arbitration. For all of the reasons articulated above, Nortel objects to the Corning proposal.

Nortel believes that the Bellcore proposal, with some refinement, best meets the principles advocated by Nortel of encouraging NASDOs to adopt their own dispute resolution procedures and ensuring that dispute resolution is accomplished in the originating NASDO (with due process) to avoid forum shopping and unnecessary delay. Nortel also believes that the process suggested by Bellcore will help ensure the adoption of quality decisions in the short time-frame mandated by Congress. The Bellcore approach is also very flexible in allowing the "funding parties" to select one of several options for resolving disputes: majority of funding parties, escalation in the NASDO, referral for mediation by a standard body, or non-binding expert tri-partite mediation panel.

Nortel believes that there is a refinement which would move the process closer to that used by some accredited SDOs at present. The Bellcore proposal (in its Appendix) speaks of a majority vote and a majority of funding parties. Since the process could apply to other industry forums, not just Bellcore,

Nortel equates funding party with dues paying member of a NASDO. In these circumstances, the majority of funders would be considered the majority of the total list of funders or the majority of the membership. However, majority vote only refers to a majority of those voting on an issue; the two are not necessarily the same because not all members may vote on an issue. Nortel suggests that for selection of the optional dispute resolution procedure, a simple majority vote be used. However, for ratification or rejection after escalation, or for action on the result of mediation, Nortel believes that the requirement should be more stringent. For those decisions, Nortel suggests a majority of the total membership (or funders) AND 2/3 of those members (or funders) voting (excluding abstentions). Such a procedure is consistent with a proposal that ANSI has recently circulated defining consensus as a majority of membership AND 2/3 of those members voting excluding abstentions.[3/]

In summary, the Notice and the initial comments identify three approaches for an alternate dispute resolution procedure: (i) binding arbitration, (ii) procedures for resolution within the NASDO including majority decision, escalation, and mediation, and (iii) a change in venue for consensus determination with the disputant selecting a SDO. There appears to be a consensus among the commenting parties that arbitration is not appropriate. Nortel supports the second

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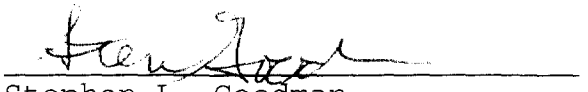
3/ "ANSI Explanation of Consensus," p. 17, February 2, 1996, ANSI Standards Action.

approach as proposed by Bellcore, with some refinements. Nortel believes that this is the only approach to meet the goal of enabling "all interested parties to influence the final resolution of the dispute without significantly impairing the efficiency, timeliness, and technical quality of the activity", within the 30 day statutory limit. The third approach, proposed by Corning, has many shortcomings, including the disruption that could result from an eleventh hour change in venue to an SDO of the disputant's choice, and the encouragement of forum shopping by companies seeking to maximize their influence. Nortel believes that this approach thus invites abuse. A change of venue is inconsistent with the goal of a quality technical decision within the 30 day statutory limit.

Respectfully Submitted,



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